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Alabama Department of Revenue

ALABAMA DEPARTMENT OF REVENUE

REVENUE RULING 2023 - 001

This document may not be used or cited as precedent. Ala. Code 1975, §40-2A-5(a).

TO: Company X

FROM: Vernon Barnett, Commissioner of Revenue

DATE: February 27, 2023

FACTS[1]

Two limited liability company affiliates of Company X, Company Y and Company Z, propose to develop a golf resort that will include residential real estate lots, a Private Club, and related amenities at a location within Alabama. The Taxpayers propose to develop and operate a private country club near the real estate lots which will include a championship golf course, practice facilities, clubhouse, golf cottages for overnight stays by members or their guests, several other club amenities, and a restaurant (collectively, the "Club").

Members of the Club will only include individual members who will pay an initiation fee and monthly fees in varying amounts depending upon their membership classification. Members of the Club will also have the option to join the Private Club which offers tennis, pickle ball, and fitness facilities and will be owned and operated by the Association and will require a separate initiation fee as well as monthly dues. Like the Club, it will not be open to the public and it will be private. It should be noted that at one point a hotel was discussed as being an additional feature of the aforementioned property as referenced in Revenue Ruling 2020-001; however, the hotel is no longer a part of the development.

Members may invite guests who will be required to pay greens fees and cart rental fees to play on the Club's golf course. All guests will be required to be sponsored by a member of the Club consistent with the guidelines outlined below. These guidelines are analogous to those approved by the Department in Revenue Ruling 94-009 issued on behalf of that Revenue Ruling Requestor and those guidelines referenced in Revenue Ruling 2020-001.

The Club will be operated as a private club pursuant to current Alabama sales/amusement tax laws and guidelines and will take the necessary steps to qualify as a private club. The proposed guest access guidelines are as follows:

[1] The facts upon which this revenue ruling is based are stated herein. To the extent that any relevant facts asserted by the requestors were omitted or were misstated, or if stated, were misleading, this revenue ruling may be invalidated by the Department of Revenue ("Department") in whole or in part or withdrawn as the circumstances may require.

"Golf Club A is a private country club operated exclusively for the benefit of its members. Benefits provided by the club are extended to guests of its members and to certain non-members only in the following circumstances:

1. Reciprocal play agreements with other golf courses that are also not open to the public;
2. Hosting tournaments in compliance with the provisions of Code of Alabama §40-23-4(a)(39), as amended from time to time;
3. Periodically holding invitational or charitable tournaments; or
4. Access as a guest of a member according to the guidelines below.

Guests of members are allowed access to the golf course. At certain times of the year, a member may be required to accompany a guest during play to ensure that sufficient course capacity is available to other members. To qualify as a guest of a member, however, a Club official must receive confirmation, written or oral, from a club member that the member will sponsor the guest before any club facilities are used, except as provided below. Club officials can allow guests to access club facilities prior to receiving the required confirmation but only if:

1. Prior to using the club facilities, the guest provides the club official with the name of an active club member who the guest states has agreed to sponsor the guest;
2. In the club official's judgment, based upon his or her personal knowledge of the guest and member, the club member will sponsor the guest; and
3. Confirmation is received from the club member if the club official deems necessary."

ISSUES

The Taxpayers request a ruling that the proposed membership structure of the Club will not be subject to the current sales/amusement tax levied under §40-23-2(2) Code of Alabama 1975 as amended, so long as the above-described member and non-member access guidelines are followed.

LAW AND ANALYSIS

To begin, it should be noted that the history of this issue, and the authority under which this ruling is written, is well- described in *Cypress Lakes Golf & Country Club v. State of Alabama Department of Revenue*, Admin. Law Div. Docket No. S. 06-174 (Op. and Prelim. Order Jan. 11, 2007) – the history beginning with the *Craft Development Corporation d/b/a Cotton Creek Club* rulings, Admin. Law Div. Dkt. No. S. 91-142 (Final Order Oct. 22, 1991)(*aff'd*, Baldwin County Circuit Court 1992), followed by *Rigdon Inc. v. State of Alabama*, Docket No. S. 02-337 (Oct. 30, 2002). In *Craft*, the Department's former Administrative Law Division held that allowing the public limited access to the golf course did not cause the gross receipts derived from the private club members to be taxable. Subsequently, as pointed out in *Cypress Lakes*, the Department promulgated Administrative Rule 810-6-1-.125.01 as a result of the *Craft* ruling. That rule provides "that if a course is deemed to be public, tax is due on all gross receipts, including initiation fees, membership dues, etc. An otherwise private course will not be deemed a public course, however, if it only allow[ed] guests of members to play, 'whether or not accompanied by the member.'" See *Cypress Lakes*, *infra*, at 3.

After the above rule was promulgated in 1993, the Department issued Revenue Ruling 94-009 (Jan. 20, 1995). As discussed above, the guest access guidelines for the Club are analogous to the guest access guidelines approved by the Department in this ruling. Thereafter, in *Rigdon Inc. v. State of Alabama*, Docket No. S. 02-337 (Oct. 30, 2002), the former Administrative Law Division pointed out the relatively common practice of private golf clubs having corporate members as well as individual members and also confirmed the Department's "longstanding interpretation" of the statute that greens fees paid by or on behalf of guests of members are not subject to the sales/amusement tax.

The next chapter in the history of this issue is the *Cypress Lakes* ruling, issued in 2007. There, the former Administrative Law Division bifurcated those activities that are private and public, holding that a golf course is only subject to tax for those activities open to the public, and holding that an otherwise private golf club would only be subjected to sales/amusement tax for charges to non-members who are not guests of members. Specifically, the former Administrative Law Division held that: "Fees and dues paid by members to belong to a private club are not derived from places of public amusement, and thus are not subject to the tax. Those non-taxable receipts do not become taxable because the club also derives receipts from a taxable source…"[a] taxpayer's gross proceeds derived from a non-taxable private source are not tainted because another activity engaged in by the taxpayer is subject to the public amusement tax. Only the gross receipts derived from 'such (public) business' should be taxed." See *Cypress Lakes* at 3.

Based on the proposed membership structure of the Club, no sales/amusement tax will be levied on either the initiation fees or monthly dues of members or the greens fees or cart rental fees paid by or on behalf of the members as well as non-member-guests who gain access to the golf course pursuant to the above proposed access guidelines.

SUMMARY OF HOLDINGS

The Club will be treated as a private country club based on the membership structure outlined herein, the facts, guidelines and the law as set forth herein and therefore is exempt from the sales/amusement tax levied by § 40-23-2(2) Code of Alabama 1975, as amended.

Vernon Barnett
Commissioner